AFR

(47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1499 of 2005

Petitioner : Vishnu Prasad Gupta

Versus

Respondents : Ram Bahadur Singh and others

Post for order on 26th April, 2007

Sd/-
Satish K. Agnihotri
Judge

(4R)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1499 of 2005

Petitioner	:	Vishnu Prasad Gupta, son of Late Shri Aanand Prasad Gupta, aged about 42 years, resident of Dewiganj Road, Ambikapur, P.S. and Tah. Ambikapur, Distt. Surguja (CG)
Versus		
Respondents	:1.	Ram Bahadur Singh, son of Ramraj Singh, aged about 60 years, resident of village Sandbar, near Forest Barrier, P.S. and Tah. Ambikapur, Distt. Surguja (Chhattisgarh)
	2.	Mandhata Singh, aged about 63 years, son of Ram Raj Singh.
	3.	Beer Bahadur Singh, son of Ram Raj Singh, aged about 58 years,
		Defendant No. 2 and 3 are resident of village and post Sarya, Bagdaura, Pargana, Sikandarpur, Tah. Rasra, Distt. Baliya (Uttar Pradesh)
	4.	The State of Chhattisgarh, through - the Collector, Ambikapur, Distt. Surguja (CG)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

SB : Hon'ble Justice Shri Satish K. Agnihotri

Present: Mr. Sunil Tripathi, Advocate for the petitioner.
Mr. Satish Gupta, Dy. Govt. Advocate for the respondent No. 4/State.

ORDER

(Passed on this 26th day of April, 2007)

1. By this petition, filed under Article 227 of the Constitution of India, the petitioner questions the legality and validity of the order dated 18.2.2005 (Annexure P/3) passed by the 1st Additional District Judge, Ambikapur in Case No. 25 A/04, whereunder the plaint of the petitioner was rejected under the provision of Order VII, Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as" the CPC").

(49)

2. The case of the petitioner is that the petitioner has filed a plaint with requisite court fee stamp in the Court of the District Judge, Ambikapur, Surguja. Accordingly, court fee stamp for the valuation of the suit i.e. Rs. 1,00,000/-, was also deposited.

3. On hearing, learned trial court found that the suit was not properly valued and sufficient court fee stamp was not deposited within the time fixed by the Court, on the ground that the plaintiff was incapable of paying the correct court fee stamp. For incorrect valuation of the suit and insufficient court fee stamp, the plaint was rejected under Order VII, Rule 11 (b) of the CPC. Vide order dated 9.2.2005, the suit was valued to the tune of Rs. 23,75,000/-. Accordingly, the petitioner was directed to deposit the requisite court fee stamp. Time was granted to the petitioner on 24.1.2005 and 9.2.2005. Despite that, no steps were taken to correct the valuation and to file the requisite court fee stamp within the time granted by the Court. Thus, the learned trial court exercising the power under Order VII, Rule 11 (b) of the CPC, dismissed the plaint.

4. Being aggrieved, the petitioner has filed this petition questioning the legality and validity of the impugned order, stating that the learned Judge ought to have returned the plaint to file with proper valuation and adequate court fee stamp. Thus, the impugned order is bad.

5. I have heard learned counsel appearing for the petitioner and perused the pleadings and documents appended thereto. It is evident that it is not the case where the plaint should have been returned to present before the appropriate Court. In the present case, the Court was competent to entertain the plaint. After hearing, the petitioner was granted time to correct the valuation within the prescribed time and deposit the requisite court fee stamp. The petitioner failed to pay the same on the ground that he was incapable of paying the correct court

fee stamp. There is no infirmity, illegality or jurisdictional error in the impugned order.

6. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

7. As a result and for the reasons aforestated, this petition is dismissed.

Sd/-
Satish K. Agnihotri
Judge

B/-